

# Disposition of the Independent Review Panel



Complainant: Derrick Williams

IRP Case: 2001.234

Date: July 29, 2005

MDPD Case: IA2001-0385

MDPD Investigation & Conclusion Time: 3yrs,7mths

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The Independent Review Panel met on July 28, 2005 for the purpose of publicly reviewing the complaint made by Mr. Derrick Williams against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

## A. Recommendations

That MDPD not allow Sgt. Michael Fisten to serve in the capacity of police officer supervisor, because of his well-documented history of lack of credibility.

## B. Incident

Mr. Derrick Williams is a former Miami-Dade County police officer, who was terminated from MDPD on August 9, 2000.

Mr. Williams alleged that his termination resulted from a vendetta that Intracoastal District Lt. Robert Diers had against him, and from lies told by his supervisor, Sgt. Michael Fisten, in monthly performance evaluations, annual evaluations, Disciplinary Actions Reports (DARs), and during the arbitration hearing.

Mr. Williams was notified that the Independent Review Panel does not act on job related complaints brought forth by county employees, except under extraordinary circumstances. In this case, the Panel looked at the Internal Affairs investigation, focused on the historical credibility of Sgt. Fisten.

## C. Allegation:

The allegation that Sgt. Michael Fisten lacked credibility to assist prosecution.

## D. Disposition of the Independent Review Panel

The Panel found the allegation to be **SUSTAINED**. A review of Sgt. Fisten's career history reveals that many of the allegations in the 18 complaints made against him deal with his credibility. Two Assistant State Attorneys testified that in unrelated cases, Sgt. Fisten "provided inaccurate information that compromised a homicide investigation" and that he "exaggerated and misrepresented the truth." Complainants' polygraph exams are part of the official records in two complaints; both polygraph exams showed no signs of deception. On one occasion, Sgt. Fisten admitted making an "error in his formal statement."

**E. Other Findings**

1. The “do not re-hire” notation on Mr. Williams’s personnel file has likely prevented Mr. Williams from securing any subsequent law enforcement position.
2. MDPD took 3 years and seven months, an excessive length of time, to complete Mr. Williams’s investigation.
3. Sgt Fisten’s lack of credibility is well documented and clearly represents conduct unbecoming a county employee.

The Independent Review Panel concluded the complaint on July 28, 2005.

# Independent Review Panel

## Committee Recommendation to the Panel

July 28, 2005

**Complaint:** A 2001.234

**MDPD Case:** IA 2001-0385

**Complainant:** Derrick Williams

**Accused Party:** Miami-Dade Police Department (MDPD) Sgt. Michael Fisten

**Date Complaint Received:** August 7, 2001

**Materials Reviewed:** Correspondence, IA Case 2001-0385, staff notes, committee notes, employee profile

**Committee:** Joseph Lopez, Chairman; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant to the Director; Linda Pierre, Conflict Resolution Specialist

Meeting Date: March 14, 2005

Present: From MDPD Professional Compliance Bureau: Sgt. Christopher Carothers; Sgt. Doug Reese and Sgt. Silvio Alvarez; Derrick Williams, Complainant

**Complaint:** Mr. Derrick Williams is a former Miami-Dade County police officer, who was terminated from MDPD on August 9, 2000.

On August 17, 2001, Mr. Williams sent a fax to the IRP alleging that his termination resulted from a vendetta that Intracoastal District Lt. Robert Diers had against him. Mr. Williams stated that his supervisor, Intracoastal Sgt. Fisten, lied under oath about his work products, monthly performance evaluations, annual evaluations, and Disciplinary Action Reports (DARs) during his arbitration hearing. In addition, Mr. Williams stated that Sgt. Fisten's lies contributed to his termination and denial of an appeal.

IRP staff asked that MDPD Internal Affairs investigate the allegation that Sgt. Michael Fisten lacked credibility to assist prosecution.

**Department Response:** The following is quoted from MDPD Disposition Panel memorandum dated February 9, 2004:

Allegation #1: Lieutenant Robert Diers has a vendetta against Mr. Williams, was out to get him, and his actions resulted in Mr. Williams's termination from Miami-Dade Police Department. (Allegation Classification: Harassment)

**“Not Sustained”**

All of the witness officers interviewed were not able to substantiate Mr. Williams’ allegations. Mr. McGill [a former MDPD officer who worked with Mr. Williams] advised that he believed the interactions between Lieutenant Diers and Mr. Williams were unprofessional and disrespectful; he did not believe that they were abusive. Based on the lack of corroborating evidence to confirm or refute the allegation, this allegation is classified as Not Sustained.

Allegation #2: Sergeant Michael Fisten is a liar, and he lied about him in Mr. Williams’ evaluation, DARs, and an appeal hearing resulting in his termination from MDPD. (Allegation Classification: Department Misconduct/Abuse of Authority)

**“Not Sustained”**

There is no indication in the file to sustain the allegation that Sergeant Fisten lied about the complainant in his evaluations, DARs and appeal hearing. According to Mr. Williams’ statement, the fact that he disagrees with Sgt. Fisten’s observations make them a lie. There is no evidence that Sergeant Fisten lied on his documented observation. The fact that there was a previous incident regarding Sergeant Fisten’s veracity does not impact these specific circumstances. Based on the lack of corroborating evidence to confirm or refute the allegation, this allegation is Not Sustained.

Allegation # 3: Sergeant Micheal Fisten is a racist and discriminated against Mr. Williams because he is black, resulting in his termination from MDPD. (Allegation Classification: Department Misconduct/Abuse of Authority)

**“Not Sustained”**

There is no information from any of the witness officers, or Sergeant Fisten himself that depicts him as a racist or that he discriminated against the complainant because he is black. Based on the lack of corroborating evidence to confirm or refute the allegation, this allegation is classified as Not Sustained.

**Committee Remarks:** Panel Member Mr. Lopez chaired the meeting and advised everyone that the meeting was being held to give Mr. Williams an opportunity to add any additional information to his complaint and focus on the IRP’s request for an investigation of Sgt. Fisten’s alleged lack of credibility to assist prosecution. The following issues were discussed during the March 14, 2005 meeting.

Concerns about the Internal Affairs Investigation

Mr. Williams indicated that he was looking for justice, an opportunity to let an independent authority hear his side of story, and a way to clear his name. Mr. Williams expressed his dissatisfaction with the amount of time the Internal Affairs took to complete the investigation.

Ms. Boersma asked Sgt. Reese why it took IA four years to complete the investigation of Mr. Williams’ complaint. Sgt. Reese indicated that the investigator (Sgt. Charles Triana) in charge of the case was placed on a new assignment and he had to complete the case while undertaking new duties.

#### Concerns about Sgt. Michael Fisten

Mr. Williams questioned Sgt. Fisten's credibility because he had lied in previous public corruption cases. Two Assistant State Attorneys testified that, in unrelated cases, Sgt. Fisten "provided inaccurate information that compromised a homicide investigation" and that he "exaggerated and misrepresented the truth." Mr. Williams stated that Sgt. Fisten boasted to other MDPD officers that he helped get Mr. Williams fired.

Mr. Lopez advised that the Independent Arbitrator considered Sgt. Fisten's credibility and determined that even without Sgt. Fisten's testimony; there was sufficient corroborative evidence to support Mr. Williams's termination.

#### Concerns about the Arbitration Hearing

Mr. Williams stated that the MDPD did not contact all of his witnesses. Mr. Williams questioned the credibility of the witnesses who were called to his arbitration. Mr. Williams advised that he heard several conflicting stories during the arbitration hearing.

Mr. Lopez asked Mr. Williams whether he was represented by counsel; was he able to present witnesses and cross-examine witnesses. Mr. Williams indicated that he was.

#### Concerns about the State Attorney's Office

Mr. Williams stated that he was a police officer for over 13 years before he was relieved from duty. Mr. Williams advised that he went to the Public Corruption Unit of the State Attorney's Office to file charges against Sgt. Fisten, but he was denied assistance.

#### Concerns about Mr. Williams's County Personnel File

Mr. Williams advised that he wanted the IRP to make recommendations to MDPD that would reinstate him as a police officer. Dr. Diaz advised that the Independent Review Panel does not have the authority to reinstate job positions. Mr. Williams stated that he has been "blackballed" from the law enforcement community, because his county personnel file contains a statement that says, "do not re-hire," even though he has committed no crime. Mr. Williams may seek civil litigation to get the "Do not Re-hire" statement removed from his county personnel file.

Mr. Lopez asked Mr. Williams why he did not appeal to the court about his termination. Mr. Williams advised that he did not have the money to hire an attorney.

#### Concerns about Police Certification

Mr. Williams stated that he cannot renew his law enforcement certification unless he is employed by a law enforcement agency.

Dr. Diaz asked the MDPD representatives whether a police officer who was employed as a volunteer could maintain his law enforcement certification. Sgt. Reese indicated that new polices suggest that an individual would have to be employed as a police officer in order to maintain his law enforcement certification. An individual, who has not been employed as a police officer at some time in the past year, loses his certification and has to go back into training to be re-certified by the State of Florida.

### Concerns about Mr. Williams' Termination

Dr. Diaz stated that Mr. Williams' termination was based on the county's progressive discipline system. Dr. Diaz indicated that the Independent Review Panel is not in the position to address Mr. Williams' termination.

Sgt. Doug Reese stated that Mr. Williams' termination followed established procedures. Sgt. Reese indicated that the allegations that were made by Mr. Williams were thoroughly investigated by IA and all three allegations were "*not sustained*" because there was not enough evidence to sustain the allegations. Sgt. Fisten's credibility was also addressed in the IA investigation. Sgt. Reese advised that he does not know who decided to place "do not re-hire" on Mr. Williams' personnel file, but the hiring authority has the right to document that decision.

**Complaint History:** Following the committee meeting, IRP staff requested copies of the Employee Profiles for Sgt. Michael Fisten and Derrick Williams.

**Sgt. Fisten** was hired by MDPD on August 17, 1981. (See Appendix A for further information.)

Complaints 1981-2002	Sustained Allegations	Disciplines Resulting from Sustained Allegations	Disciplines not Related to Complaints	Other Discipline/Remedial Action
18	5	2	2	2

**Derrick Williams** worked for MDPD from 1987 to August 9, 2000. (See Appendix B for further information.)

Complaints 1987-2000	Sustained Allegations	Disciplines Resulting from Sustained Allegations	Disciplines not Related to Complaints	Other Discipline/Remedial Action
11	9	4	9	0

### **Committee Findings:**

#### **A. Regarding the allegation that Sgt. Michael Fisten lacked credibility to assist prosecution.**

The committee found the allegation to be **SUSTAINED**. A review of Sgt. Fisten's career history reveals that many of the allegations in the 18 complaints made against him deal with his credibility. Two Assistant State Attorneys testified that in unrelated cases, Sgt. Fisten "provided inaccurate information that compromised a homicide investigation" and that he "exaggerated and misrepresented the truth." Complainants' polygraph exams are part of the official records in two complaints; both polygraph exams showed no signs of deception. On one occasion, Sgt. Fisten admitted making an "error in his formal statement."

It should also be noted that in this particular complaint, the committee found that the Independent Arbitrator considered Sgt. Fisten's credibility in Mr. Williams's arbitration hearing, and determined that even without Sgt. Fisten's testimony, there was sufficient corroborative evidence to support Mr. Williams's termination.

**B. Other Findings:**

1. The "do not re-hire" notation on Mr. Williams's personnel file has likely prevented Mr. Williams from securing any subsequent law enforcement position.
2. MDPD took 3 years and seven months, an excessive length of time, to complete Mr. Williams's investigation.
3. Sgt Fisten's lack of credibility is well documented and clearly represents conduct unbecoming a county employee.

**Recommendations:** The committee recommends that:

1. That MDPD not allow Sgt. Fisten to serve in the capacity of police officer supervisor.
2. That the Panel conclude the complaint.

## Appendix A

### Sgt. Michael Fisten's Complaint History

Sgt. Fisten was hired by MDPD on August 17, 1981.

Complaints 1981-2002	Sustained Allegations	Disciplines Resulting from Sustained Allegations	Disciplines not Related to Complaints	Other Discipline/Remedial Action
18	5	2	2	2

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1998	Discourtesy
1999	Inaccurate information
2001	Inaccurate information
2000	Failed to prepare Supervisor's Use of Force to Control Report
2001	Failed to prepare Supervisor's Use of Force to Control Report

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1992	Written Reprimand	Failed to use sound judgment in reporting facts in homicide case and preserving evidence
2002	Written Reprimand	Failed to prepare supervisor's use of force report.

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1998	Written Reprimand	Failed to maintain a professional bearing and courteous demeanor during an interview on a police shooting investigation
2001	Written Reprimand	Failed to prepare Supervisor's Use of Force to Control Report

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1999	5 Day suspension	Misrepresentation and falsification	<b>Reversed</b>
2000	Record of Counseling	Failed to prepare Supervisor's Use of Force to Control Report	



## Appendix A

### Complaints Involving Sgt. Michael Fisten

NS Not Sustained S Sustained EX Exonerated

	Complaint No.	Allegation(s)	Type of Incident	Cmpl Race	Find ing	Action	Comments
1	PC 81-294	Conduct towards the Public	Bicycle Stop	W/M	NS	None	
2	PC 81-415	Conduct towards the Public	Traffic stop	W/F	NS	None	
3	IR 84-271	Battery, Aggravated Assault, Obedience to Laws and Rules, Standards of Conduct	Prisoner in custody	B	NS	None	Fisten admitted "error in his formal statement"
4	IR 84-285	Battery, Obedience to Laws and Rules, Standards of Conduct	Prisoner in custody	B	NS	None	
	6/15/1992	Administrative				Written Reprimand	Failed to use sound judgment in reporting facts in homicide case & in preserving evidence
5	PC 96-188	Misconduct/Force Violation	While arresting	Not public record (minor)	NS	None	
6	IA 97-026	General Conduct, Use of Force	While arresting	B	NS	None	
7	PC 97-435	General Conduct, Collective Bargaining Overtime Provisions	Supervisor/emp	W	NS, EX	None	
8	IA 97-336	Death In Custody	Substance crazed man	B	EX	None	
9	PC 98-522	Overreacting Discourtesy	While interviewing subj/wit	B	NS, S	Written Reprimand	Failed to maintain a professional bearing and courteous demeanor during an interview on a police shooting investigation
10	IA 99-028	Discourtesy, Missing Property "Fuck" Cmpl mis-identified Fisten	Drug raid	W Palestinian Arabic, Tunisia)	NS	None	
11	PC 99-275	Misrepresentation and Falsification	Gave inaccurate info in pre-depo mtg	W (Assistant State Attorney)	S	5-day Suspension	Suspension reversed on rec of hearing examiner
12	IA 99-449	Use of Force, Prisoner Related Activities, Safeguarding Against Arrest	While arresting	B	NS	None	
13	IA 2000-0010	Compliance with Laws and Directives	While arresting	B	S	Record of Counseling	Failed to prepare SRUFC Report
14	IA 2001-0305	Compliance with Laws and Directives	While arresting	B	S	Written Reprimand	Failed to prepare SRUFC Report
15	IA 2001-0326	Courtesy, Use of Force	While detaining	B	NS	None	
	IA 2001-269	Other Findings: Provided misinformation to arresting officers	While arresting	B	S	None	District Command Staff disagreed with finding
17	IA 2001-0385	Harassment, Misconduct/Abuse of Authority,	Supervisor/emp (Williams)	B	NS	None	
	2/13/02	Administrative				Written Reprimand	Failed to prepare supervisor's use of force to control report
18	PC 2002-0200	Misconduct/Improper Procedure, Misconduct/ Unnecessary Towing	Interview of Minor	B	EX, NS	None	

## Appendix B

### Derrick Williams' Complaint History

Mr. Williams worked for MDPD from 1987 to August 9, 2000.

Complaints 1987-2000	Sustained Allegations	Disciplines Resulting from Sustained Allegations	Disciplines not Related to Complaints	Other Discipline/Remedial Action
11	9	4	9	0

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1991	Improper procedure
1991	Discourtesy
1993	Improper procedure
1998	Improper procedure
1998	Discourtesy
1998	Discourtesy
1998	Discourtesy
2000	Conduct Unbecoming
2000	Conduct Unbecoming

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1991	Written Reprimand	Improper procedures by searching a female subject and using obscenities
1993	Written Reprimand	Transported his two rottweiler dogs in his assigned vehicle while off-duty
1998	Written Reprimand	Involved in verbal altercation while off-duty
1999	1 Day Suspension	Used profanity and failed to accurately record activities on activity sheet.

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1989	5 Day Suspension	Used profanities and inflammatory behavior towards supervisor
1989	3 Day Suspension	Made derogatory remarks regarding a supervisor on channel 15
1992	Written Reprimand	Failed to contact the vehicle data entry unit for impounded vehicle
1992	Written Reprimand	Failed to appear at scheduled court appearance
1995	Written Reprimand	Failed to appear for prefile conference with SAO
1997	1 Day Suspension	Failed to appear for prefile conference with SAO
1998	1 Day Suspension	Was discourteous while off-duty and used profane language towards dept. employees
1998	5 Day Suspension	Was discourteous while off-duty
1999	10 Day Suspension	Failed to comply with orders, to adhere to duty responsibilities, tardy
2000	Dismissal	Refused to comply with orders, continued to use profane language, unprofessional behavior, insubordinate

## Appendix B

### Complaints Involving Derrick Williams

NS Not Sustained S Sustained EX Exonerated

	Complaint No.	Allegation(s)	Finding	Action	Comments
1	09/12/1989	Administrative		5 Day Suspension	Employee used profanities and inflammatory behavior towards his supervisor.
2	12/13/1989	Administrative		3 Day Suspension	Employee has made derogatory remarks regarding a direct order given by his supervisor over channel 15.
3	PC 1991-0192	Improper Procedure Discourtesy	S S	Written Reprimand	Employee utilized improper procedures by searching a female subject and used obscenity toward her.
4	PC 1992-0058	Discourtesy	NS		
5	IA 1992-0115	Battery Theft	NS NS		
6	8/11/1992	Administrative		Written Reprimand	Employee failed to contact the vehicle data entry unit for impounded abandoned vehicle, and failed to write a report for this transaction.
7	11/30/1992	Administrative		Written Reprimand	Employee failed to appear at a scheduled court appearance.
8	PC 1993-0288	Discourtesy Improper Procedure	NS S	Written Reprimand	Employee transported his two rottweiler dogs in his assigned vehicle
9	12/21/1995	Administrative		Written Reprimand	Employee failed to appear for a pretrial conference with the SAO.
10	IA 1997-0501	Unauthorized Force	NS		
11	PC 1997-0584	Improper Procedure, Minor Force, Discourtesy, Abuse of Authority	NS NS NS NS		
12	12/16/1997	Administrative		1 Day Suspension	Employee failed to appear for a pretrial conference with the SAO.
13	PC 1998-0115	Improper Procedure, (2) Discourtesy	NS (2) NS		
14	PC 1998-0177	Over Reacting, Discourtesy Improper Procedure, Discourtesy Improper Procedure	NS, S NS NS S	1 Day Suspension	Employee used profanity towards a civilian and failed to accurately record his activities on his daily activity report.
15	PC1998-0349	Discourtesy (2)	S (2)	Written Reprimand	Employee was involved in a verbal altercation while in an off-duty status.
16	12/10/1998	Administrative		1 Day Suspension	Employee while in an off-duty capacity was discourteous and used profane language towards departmental employees.
17	11/29/1999	Administrative		5 Day Suspension	Employee while in an off-duty capacity was discourteous
18	IA 2000-0012	Force Violation-Domestic	NS		
19	IA 2000-0155	Conduct Unbecoming Violation, (2) Conduct Unbecoming Violation (2)	NS (2) S (2)		
20	5/31/2000	Administrative		10 Day Suspension	Employee failed to follow or comply with orders and directives from superiors, to adhere to duty responsibilities, repeatedly being tardy for work.
21	6/15/2000	Administrative		Dismissal	Employee refused to comply with orders and directives from superiors, continued to use profane language, display unprofessional behavior and was insubordinate toward superiors.